## NOTES OF CASES.

**Prior Action between Same Parties as Ground for Abatement.**—In Van Vleck *v.* Anderson, 113 Northwestern Reporter, 853, the Supreme Court of Iowa holds that the general rule that, in order that one action may be abated through the pendency of a prior action, the parties must occupy the same position as plaintiffs and defendants has exceptions, which do not permit successive actions to be brought to construe a will with the parties reversed.

**Removal of Cause on Account of Diverse Citizenship.**—A corporation composed of a consolidation of various companies organized in different states was held, by the United States Supreme Court in Patch *v.* Wabash Ry. Co., 28 Supreme Court Reporter, 80, not entitled to remove a suit brought against it in a court of a state in which one of the constituent companies was incorporated, to a federal court. The fact that it was incorporated in other states than that in which the suit was brought was held not to make it a nonresident.

**Misstatement of Opinion of Court by Newspaper as Contempt.**—A newspaper published a misstatement of an opinion handed down by the Supreme Court of Rhode Island. In contempt proceedings therefor the paper alleged that the error was unintentional. The court held its good intentions afforded no excuse in view of the fact that its act in attempting to state the law was purely voluntary, but allowed it to purge itself by publishing the opinion in the contempt case on its editorial page where the former article appeared. The decision is reported as In re Providence Journal Co., 68 Atlantic Reporter, 428.

**Liability of Directors for Wrongful Payment of Dividends.**—In an action against a corporation to recover moneys wrongfully paid to stockholders out of the capital as dividends, a plea that a committee appointed to investigate the matter reported such action unnecessary, and that at a meeting of the stockholders the majority voted against such action, was held, by the Court of Errors and Appeals of New Jersey, in the case of Seigman *v.* Electric Vehicle Co., 65 Atlantic Reporter, 910, to state no defense. The court said that the violation of the New Jersey statutes on this subject affected not only the rights of the stockholders, but also those of the creditors, and that, even if it could be sanctioned by unanimous vote, this could not take away the right of the public to be not misled as to the actual corporate assets.

**Change of Statute of Limitations.**—The Supreme Judicial Court of Massachusetts, in Mulvey *v.* City of Boston, 83 Northeastern Reporter, 402, held that a change by the Legislature of the statute of limitations from six years to two, allowing 30 days in which to bring

actions for personal injuries against cities, which accrued more than two years before, is not unconstitutional, and that in a small state like Massachusetts, where means of communication are so adequate, an allowance of 30 days is a reasonable time in which to bring an action which would be barred by the change.

**Recovery of Payment Made by Mistake.**—The parties to the case of Johnson *v.* Saum, 114 Northwestern Reporter, 618, had made a settlement of their accounts. It appeared that plaintiff was indebted to defendant for $540, in payment of which plaintiff transferred to defendant a mare. Subsequently plaintiff found that he was mistaken in supposing himself indebted to defendant, and brought action for the recovery of $540. Defendant offered to prove that the mare was worth not more than $30, which offer the court refused, and plaintiff recovered judgment for $465. The Supreme Court of Iowa held that recovery should have been limited to the value of the mare, expressing the devout hope that the unfortunate mare, which had twice made the journey from the trial court and back again, might not be again compelled to repeat the dreary round, and suggesting to her sponsors that the game was not worth the candle.

**Injuries to Automobile from Defects in Highway.**—A railroad company, in reconstructing a highway, had filled its bed with two or three feet of sand, in which plaintiff's automobile became struck while passing over. Assistance was necessary to disengage the car, which, while being extricated, was injured. Action was then instituted for damages. In Doherty *v.* Town of Ayer, 83 Northeastern Reporter, 677, the Supreme Judicial Court of Massachusetts held that statute, enacted more than 100 years ago, providing that highways should be kept in repair at the expense of the city or town, so as to be reasonably safe and convenient for travelers with carriages, could not reasonably be construed to embrace heavy machines like modern automobiles, as this would put towns in sparsely settled districts under enormous expense in the maintenance of highways.

**Illegal Consideration.**—A note was given in consideration of release of liability and dismissal of suit on another note, the consideration of which was the transfer of a liquor license in violation of law. In Kennedy *v.* Welch, 83 Northeastern Reporter, 11, the Supreme Judicial Court of Massachusetts held that illegality permeated the entire transaction; and, the first note being invalid, the dismissal of an action on it furnished no valid independent consideration for the new note.

**Liability of Lessor of Theater for Death of Patron.**—Defendant owned a building, which was not entirely completed, that he had leased to an amusement company. There was a door marked "Exit,"